



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06  
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 23 December 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision Concerning Submission of Corrected  
Indictment and Request to Amend Pursuant to Rule 90(1)(b)**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(1) and (8) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a) and 90(1)(b) and (2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (collectively referred to as the "Accused") ("Confirmation Decision").<sup>2</sup>

2. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") submitted the indictment ("Confirmed Indictment"),<sup>3</sup> with redactions as authorised by the Pre-Trial Judge.<sup>4</sup>

3. On 11 December 2020, the SPO submitted confidential redacted Rule 86(3)(b) outlines ("Rule 86(3)(b) Outlines").<sup>5</sup>

4. On 22 July 2021, the Pre-Trial Judge issued a decision wherein the SPO was ordered to file a corrected version of the Confirmed Indictment by 3 September 2021 ("Decision on the Form of the Indictment").<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, strictly confidential and *ex parte*. A public redacted version was filed on 30 November 2020.

<sup>3</sup> KSC-BC-2020-06, F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public. On 11 December 2020, the Prosecutor submitted a confidential, lesser redacted version of the Confirmed Indictment, F00134.

<sup>4</sup> Confirmation Decision, para. 521(c)-(d).

<sup>5</sup> KSC-BC-2020-06, F00136, Specialist Prosecutor, *Submission of Confidential Redacted Rule 86(3)(b) Outlines*, 11 December 2020, public, with Annexes 1-2, confidential.

<sup>6</sup> KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment* ("Decision on Form of the Indictment"), 22 July 2021, confidential, para. 179(d). A public redacted version was filed the same day.

5. On 3 September 2021, the SPO filed its “Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)” (“Request”).<sup>7</sup>

6. On 20 September 2021, the Defence for Rexhep Selimi (“Selimi Defence”),<sup>8</sup> the Defence for Hashim Thaçi (“Thaçi Defence”),<sup>9</sup> the Defence for Jakup Krasniqi (“Krasniqi Defence”),<sup>10</sup> and the Defence for Kadri Veseli (“Veseli Defence”)<sup>11</sup> (collectively referred to as the “Defence”) responded to the Request.

7. On 27 September 2021, the SPO filed a reply (“Reply”).<sup>12</sup>

8. On 17 December 2021, following a request by the SPO,<sup>13</sup> the Pre-Trial Judge delayed the disclosure of the identities of certain witnesses until 14 days after an ultimate resolution of the Request.<sup>14</sup>

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<sup>7</sup> KSC-BC-2020-06, F00455, Specialist Prosecutor, *Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed on 8 September 2021, F00455/CONF/RED and F00455/RED, respectively.

<sup>8</sup> KSC-BC-2020-06, F00477, Defence for Rexhep Selimi, *Selimi Defence Response to Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)* (“Selimi Response”), 20 September 2021, confidential. A public redacted version was filed on 22 October 2021, F00477/RED.

<sup>9</sup> KSC-BC-2020-06, F00478, Defence for Hashim Thaçi, *Thaçi Defence Response to Confidential Redacted Version of ‘Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)’*, KSC-BC-2020-06/F00455, dated 3 September 2021 (“Thaçi Response”), 20 September 2021, confidential.

<sup>10</sup> KSC-BC-2020-06, F00480, Defence for Jakup Krasniqi, *Krasniqi Defence Response to the SPO Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)* (“Krasniqi Response”), 20 September 2021, confidential. A public redacted version was filed on 5 October 2021, F00480/RED.

<sup>11</sup> KSC-BC-2020-06, F00481, Defence for Kadri Veseli, *Veseli Defence Response to SPO Submission of Corrected Indictment and Leave to Amend the Indictment (KSC-BC-2020-06/F00455/CONF/RED)* (“Veseli Response”), 20 September 2021, confidential.

<sup>12</sup> KSC-BC-2020-06, F00492, Specialist Prosecutor, *Prosecution Reply Relating to its Rule 90(1)(b) Request* (“Reply”), 27 September 2021, confidential.

<sup>13</sup> KSC-BC-2020-06, F00599, Specialist Prosecutor, *Prosecution Request for Temporary Extension of Delayed Disclosure of Identity*, 9 December 2021, strictly confidential and *ex parte*. A confidential redacted version was filed the same day F00599/CONF/RED.

<sup>14</sup> KSC-BC-2020-06, F00630, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Request for Temporary Extension of Delayed Disclosure of Identity*, 17 December 2021, strictly confidential and *ex parte*. A confidential redacted version was filed the same day, F00630/CONF/RED.

## II. SUBMISSIONS

9. The SPO requests leave to amend the Confirmed Indictment to include allegations relating to: (i) two related detention sites located at [REDACTED] municipality at or in connection with which Kosovo Liberation Army (“KLA”) members committed acts of persecution, imprisonment/arbitrary detention, other inhumane acts/cruel treatment, torture, murder, and enforced disappearance (“First Category”); (ii) two incidents of persecution and murder committed in connection with the Gjilan/Gnjilane detention site and a modification of the timeframe for the Gjilan/Gnjilane detention site (“Second Category”); and (iii) two incidents of the Accused’s personal participation in the crimes charged (“Third Category”) (collectively, “Proposed Amendments”).<sup>15</sup>

10. The SPO submits that the Proposed Amendments do not add new counts or new modes of liability and as such they do not constitute new or more serious charges and therefore Rule 86(3)-(4) of the Rules does not apply.<sup>16</sup> The SPO submits that, in any event, the supporting material meets the standards of Rule 86(4) of the Rules and the Proposed Amendments are sufficiently detailed and clear to enable adequate defence preparation.<sup>17</sup> It further argues that Defence submissions should be limited to the impact of the Proposed Amendments on the Accused’s rights at this stage of the proceedings.<sup>18</sup> The SPO submits that the Proposed Amendments do not prejudice the Accused’s rights.<sup>19</sup> Rather, the Proposed Amendments ensure that the factual allegations in the Confirmed Indictment more fully reflect the scope of the criminal incidents and Accused’s involvement and the victims of the crimes charged.<sup>20</sup>

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<sup>15</sup> Request, paras 1, 15.

<sup>16</sup> Request, para. 3.

<sup>17</sup> Request, para. 4.

<sup>18</sup> Request, para. 5.

<sup>19</sup> Request, paras 8-13.

<sup>20</sup> Request, paras 6-7.

11. The Selimi Defence responds that the Pre-Trial Judge must reject the Proposed Amendments.<sup>21</sup> The Selimi Defence argues that the First Category and Second Category of charges constitute new factual allegations which would provide an independent basis for conviction and should therefore be considered new charges.<sup>22</sup> In addition, the Selimi Defence argues that there is no limitation on the scope of submissions it may provide in relation to proposed amendments to an indictment.<sup>23</sup> It argues that the regime for amending indictments requires that the Pre-Trial Judge consider Defence submissions relating to the sufficiency of the evidence as well as all factors relevant to the exercise of his discretion.<sup>24</sup> Finally, the Selimi Defence argues that: (i) the Proposed Amendments do not improve the clarity and precision of the case to be met;<sup>25</sup> (ii) the SPO did not act with diligence in making the Proposed Amendments;<sup>26</sup> and (iii) the Proposed Amendments would prejudice the Defence.<sup>27</sup>

12. The Thaçi Defence responds that the Proposed Amendments should be rejected.<sup>28</sup> In the alternative, the Thaçi Defence requests that the Proposed Amendments be recognised as new charges<sup>29</sup> and the SPO be ordered to provide a lesser redacted version of the Confirmed Indictment and consolidated outline with the new alleged incidents.<sup>30</sup> The Thaçi Defence argues that the Proposed Amendments: (i) add new charges as the allegations introduce entirely new facts constituting a basis for conviction distinct from any previously alleged<sup>31</sup> and (ii) are prejudicial and inconsistent with the rights of the Accused.<sup>32</sup>

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<sup>21</sup> Selimi Response, para. 1.

<sup>22</sup> Selimi Response, paras 2, 5-8.

<sup>23</sup> Selimi Response, paras 9-10.

<sup>24</sup> Selimi Response, paras 11-14.

<sup>25</sup> Selimi Response, para. 16.

<sup>26</sup> Selimi Response, paras 2, 17-19.

<sup>27</sup> Selimi Response, paras 2, 20-22.

<sup>28</sup> Thaçi Response, para. 23.

<sup>29</sup> Thaçi Response, para. 24.

<sup>30</sup> Thaçi Response, para. 25.

<sup>31</sup> Thaçi Response, paras 8-15.

<sup>32</sup> Thaçi Response, paras 16-22.

13. The Krasniqi Defence responds that a lesser redacted or unredacted version of the Proposed Amendments must be provided to the Defence before submissions thereon may be made.<sup>33</sup> In the alternative, the Krasniqi Defence submits that the Proposed Amendments should be rejected because the SPO has unjustifiably delayed submitting them.<sup>34</sup>

14. The Veseli Defence responds that the Request should be rejected in its entirety.<sup>35</sup> The Veseli Defence argues that the volume and timing of the Proposed Amendments would unfairly prejudice the Accused and is not in the interests of justice.<sup>36</sup> It further argues that the SPO had prior knowledge of the allegations comprising the Proposed Amendments and offers no justification for failing to include them in the Confirmed Indictment.<sup>37</sup> The Veseli Defence argues that the Proposed Amendments add confusion and uncertainty to an already sprawling and unmanageable case.<sup>38</sup> It argues that the Third Category should be summarily dismissed because redactions vitiate the Accused's rights under Rule 90(1)(b) of the Rules.<sup>39</sup> The Veseli Defence asserts that the Proposed Amendments introduce new bases for conviction that are factually and legally distinct from any previously alleged in the Confirmed Indictment and therefore constitute new charges.<sup>40</sup> Finally, the Veseli Defence contends that the SPO is attempting to benefit from a "loophole" by ignoring the Pre-Trial Judge's orders and filing charges involving Joint Criminal Enterprise ("JCE") III liability for special intent crimes.<sup>41</sup>

15. The SPO replies that the Proposed Amendments should be allowed as they do not cause unfair prejudice to the Accused or undue delay and seek to ensure the rights

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<sup>33</sup> Krasniqi Response, paras 2, 7-11, 16.

<sup>34</sup> Krasniqi Response, paras 3, 12-15, 17.

<sup>35</sup> Veseli Response, para. 2.

<sup>36</sup> Veseli Response, paras 2-3, 24-30.

<sup>37</sup> Veseli Response, paras 3, 31-32.

<sup>38</sup> Veseli Response, paras 4, 21-23.

<sup>39</sup> Veseli Response, paras 5-6.

<sup>40</sup> Veseli Response, paras 7-20.

<sup>41</sup> Veseli Response, para. 33.

of victims.<sup>42</sup> The SPO argues that, in light of limited scope of the Proposed Amendments, the fact that no trial date has been set, and the fact that preliminary motion litigation is ongoing, the Defence has failed to concretely establish that it will not have sufficient time to prepare.<sup>43</sup> The SPO further argues that Rule 92 and Rule 97 procedures can run concurrently with the remaining pre-trial proceedings and therefore need not delay the start of trial.<sup>44</sup> The SPO argues that the issue of diligence in putting forward the Proposed Amendments should be assessed in light of the need to transcribe, translate, and analyse evidence and should be considered in the context of the case as a whole.<sup>45</sup> Finally, the SPO submits that the redactions to the Proposed Amendments are necessary to give effect to court-ordered protective measures and do not prejudice the overall ability of the Defence to make submissions on their impact on the fairness of proceedings.<sup>46</sup>

### III. APPLICABLE LAW

16. Pursuant to Article 39(8) of the Law and Rule 90(1)(b) of the Rules, after the indictment is confirmed but before the trial has begun, the Specialist Prosecutor may, with permission of the Pre-Trial Judge having heard the Parties, amend the indictment. If the Specialist Prosecutor seeks to add new charges or to substitute more serious charges, the Pre-Trial Judge shall review such charges and hold an initial hearing in accordance with this Article.

17. Pursuant to Rule 9(5)(a) of the Rules, the Pre-Trial Judge may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

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<sup>42</sup> Reply, para. 1.

<sup>43</sup> Reply, para. 2.

<sup>44</sup> Reply, para. 3.

<sup>45</sup> Reply, para. 4.

<sup>46</sup> Reply, para. 5.

18. Pursuant to Rule 90(2) of the Rules, a Panel may grant leave to amend the indictment if satisfied that the amendment is not prejudicial to or inconsistent with the rights of the Accused. Where the Specialist Prosecutor seeks to include new charges or substitute more serious charges, Rule 86(3) and (4) shall apply *mutatis mutandis*.

#### IV. DISCUSSION

##### A. NATURE OF THE AMENDMENT

19. The SPO submits that the Proposed Amendments do not add new counts or new modes of liability; rather, they provide additional factual allegations and clarifications supporting existing charged crimes and modes of liability and Rule 86(3)-(4) of the Rules does not apply.<sup>47</sup>

20. The Veseli Defence contends that the SPO conflates the concept of “charges” on the one hand and “counts” and “modes of liability” on the other.<sup>48</sup> Similarly, the Selimi Defence contends that the SPO’s reliance on a Court of Appeals Panel ruling relating to the form of the indictment is completely inapposite as the matter at hand relates to the amendment of an indictment.<sup>49</sup> It is argued that, while the Proposed Amendments do not add new counts or modes of liability, they do amount to new charges because they introduce bases for conviction that are factually and/or legally distinct from any already alleged in the Confirmed Indictment.<sup>50</sup> It is further contended that the SPO contradicts itself when it simultaneously asserts that it is seeking to add *additional* sites, victims, and instances of the Accused’s personal participation and that they relate to locations and incidents *already included* in the Confirmed Indictment.<sup>51</sup>

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<sup>47</sup> Request, para. 3.

<sup>48</sup> Veseli Response, para. 7.

<sup>49</sup> Selimi Response, para. 7.

<sup>50</sup> Selimi Response, paras 4-6; Thaçi Response, para. 9; Veseli Response, paras 7-11.

<sup>51</sup> Selimi Response, para. 8; Thaçi Response, para. 8.



21. With regard to the individual category of amendments, the Selimi Defence, Thaçi Defence and Veseli Defence contend that the First Category and Second Category of the Proposed Amendments constitute new charges as they either add entirely new crimes sites, new victims or an entirely new set of incidents that would constitute an independent basis for conviction.<sup>52</sup> With respect to portions of the Third Category of the Proposed Amendments that are completely redacted, the Thaçi Defence responds that it reserves its position.<sup>53</sup> As regards paragraph 43 of the Confirmed Indictment, as proposed for amendment, relating to the Third Category of Proposed Amendments, the Thaçi Defence argues that it constitutes an entirely new charge as it relates to an incident at a new location.<sup>54</sup> The Veseli Defence argues that the Third Category amounts to a new charge, given that: (i) the Pre-Trial Judge warned the SPO to request leave to amend the Confirmed Indictment in case it wished “to plead further instances of personal participation of the Accused in the crimes charged” and (ii) Article 46(6) of the Law makes it abundantly clear that personal participation may be a separate basis for conviction even where JCE has been pleaded.<sup>55</sup> The Selimi Defence does not take a position in relation to the Third Category of Amendments as it relates to other Accused.<sup>56</sup>

22. The Pre-Trial Judge considers that, in order to determine the applicability of Rule 86(3) and (4) of the Rules, it must be determined whether the Proposed Amendments constitute new charges or substitute more serious charges. A new charge introduces a new basis for conviction not previously reflected in the Confirmed Indictment that is factually or legally distinct from any already alleged.<sup>57</sup> In this

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<sup>52</sup> Selimi Response, paras 3-7; Thaçi Response, paras 10-13; Veseli Response, paras 12-17.

<sup>53</sup> Thaçi Response, para. 14.

<sup>54</sup> Thaçi Response, para. 14.

<sup>55</sup> Veseli Response, para. 19.

<sup>56</sup> Selimi Response, para. 2.

<sup>57</sup> Similarly, ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, [Decision on Motion to Amend the Amended Indictment](#), 12 January 2007, para. 16; *Prosecutor v. Popović et al.*, IT-05-88-PT, [Decision on Further Amendments and Challenges to the Indictment \(“Popović Decision on Amended Indictment”\)](#), 13 July 2006, para. 11; *Prosecutor v. Halilović*, IT-01-48-PT, [Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment \(“Halilović Decision”\)](#), 17 December 2004, para. 30. See also, ICC, *Prosecutor v. Yekatom and*

regard, the introduction of a form of responsibility not previously reflected in the indictment amounts to the inclusion of a new charge because it introduces a basis for conviction that is legally distinct from those already alleged. The introduction of a factual allegation not previously alleged in the indictment may also amount to a new charge, but only where it exposes an accused to an additional basis for conviction.<sup>58</sup> Thus, an amendment seeking to replace a reference to an unknown number of victims with a specific number of victims is a new factual allegation, but does not expose an accused to an additional risk of conviction and therefore does not amount to a new charge. On the other hand, an amendment that alleges a different crime, even without additional factual allegations, could be the sole legal basis for the Accused's conviction and therefore constitutes a new charge.<sup>59</sup>

23. Pursuant to Rule 90(2) of the Rules, when a proposed amendment does not amount to a new or more serious charge, the Pre-Trial Judge does not undertake an analysis of the supporting material underlying the proposed amendment.<sup>60</sup> This is because an accused is not exposed to an additional basis for conviction and therefore is not prejudiced in this manner by the addition to the indictment. Notwithstanding this procedural divergence between amendments amounting to new or more serious charges and other amendments, pursuant to Rule 90(1)(b) of the Rules, the Pre-Trial Judge determines whether the SPO is granted leave to amend an indictment regardless of the nature of the amendment.

24. With respect to the First Category of amendments, the SPO seeks to add two detentions sites not previously included in the Confirmed Indictment.<sup>61</sup> While the

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*Ngaïssona*, ICC-01/14-01/18-517, Pre-Trial Chamber II, [Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61\(9\) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges'](#), 14 May 2020, para. 20.

<sup>58</sup> Similarly, *Popović* Decision on Amended Indictment, para. 11.

<sup>59</sup> ICTY, [Halilović Decision](#), para. 35.

<sup>60</sup> This system differs from the system of amending indictments at the *ad hoc* tribunals where leave to amend cannot be granted unless an assessment of the supporting material is undertaken. Rule 50(A)(ii) of IRMCT Rules; *See also*, ICTR, *Prosecutor v. Setako*, ICTR-04-81-I, [Decision on the Prosecution's Request to Amend the Indictment](#), 18 September 2007, para. 6.

<sup>61</sup> Request, para. 11.

municipality in which these detention sites are located is currently referenced in the Confirmed Indictment, the two locations which the SPO now seeks to add are not.<sup>62</sup> The First Category also includes the addition of 12 victims that were not previously identified in the Confirmed Indictment.<sup>63</sup> In addition, the two new detention sites are factually distinct from other detention sites in the Confirmed Indictment as evidenced by the separate and new entries required in the proposed amended indictment.<sup>64</sup> Accordingly, the Pre-Trial Judge finds that the new allegations carry an additional risk of conviction in and of themselves. Thus, the First Category constitutes a new charge as it introduces a basis for conviction that is factually or legally distinct from any charge already alleged in the Confirmed Indictment.

25. With respect to the Second Category of amendments, the SPO seeks to add two instances of persecution and murder to a previously pleaded detention site.<sup>65</sup> In so doing, the SPO also seeks to adjust the temporal scope of the charge from “late June 1999” to “late June 1999 and July 1999.”<sup>66</sup> The number of victims of arbitrary detention in relation to this detention site continues to be described as “at least three persons.”<sup>67</sup> The Pre-Trial Judge notes, however, that the Second Category adds two victims whose alleged abduction and murder are factually distinct from the alleged abduction and cruel treatment and/or torture of the previously pleaded victims.<sup>68</sup> In addition, the Second Category adds the legally distinct crime of murder, which was not previously pleaded in relation to this detention site. Thus, the Second Category constitutes a new charge as it introduces a basis for conviction that is factually or legally distinct from any already alleged in the Confirmed Indictment.

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<sup>62</sup> Confirmed Indictment, Schedule A.

<sup>63</sup> Annex 2 to Request, paras 68, 105, 157, pp. 69, 71.

<sup>64</sup> Annex 2 to Request, paras 68, 105, 157.

<sup>65</sup> Annex 2 to Request, paras 93, 174, pp. 58, 63.

<sup>66</sup> Annex 2 to Request, paras 93, 135, p. 58.

<sup>67</sup> Annex 2 to Request, para. 93, p. 58.

<sup>68</sup> *Compare*, Annex 4 to Request to KSC-BC-2020-06, F00006/A02, Specialist Prosecutor, Annex 2 to Request to Present Additional Supporting Materials, 2 June 2020, strictly confidential and *ex parte*, pp. 565-571.

26. With respect to the Third Category of amendments, the SPO seeks to add two incidents of the Accused's personal participation in the crimes charged.<sup>69</sup> The SPO seeks to add these two incidents as examples of the Accused's personal participation "in the treatment of Opponents on the ground by participating in the intimidation, interrogation, mistreatment, and detention of Opponents".<sup>70</sup> While the two new incidents are factually distinct from those already pleaded under this heading,<sup>71</sup> they do not amount to new charges. The two additional incidents are material facts underpinning the allegation that the Accused personally participated "in the intimidation, interrogation, mistreatment, and detention of Opponents". However, as the intimidation and mistreatment of Opponents as a form of participation in the JCE has already been pleaded in the Confirmed Indictment and the Accused were notified thereof, the Third Category does not allege a new type of participation in the alleged JCE, but rather adds further precision to a form of participation already pleaded.<sup>72</sup> The Third Category accordingly does not amount to a new, independent basis for conviction.

27. Furthermore, in relation to the Third Category of the Proposed Amendments, and contrary to the Veseli Defence's contention,<sup>73</sup> Article 46(6) of the Law does not stand for the proposition that an incident of personal participation, as part of the alleged contribution to a JCE, may be a separate basis for conviction. Rather, this article provides that the Court of Appeal may enter findings on alternative modes of liability where the Trial Panel has not or remand the matter to the Trial Panel. The Court of Appeals' power to make findings in relation to alternative modes of liability does not establish whether a proposed amendment amounts to a new charge. In

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<sup>69</sup> Request, paras 1, 11.

<sup>70</sup> Confirmed Indictment, para. 40.

<sup>71</sup> Confirmed Indictment, paras 41-47.

<sup>72</sup> ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-PT, [Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment](#), 16 December 2009, para. 41; *Popović* Decision on Amended Indictment, para. 26. See also, ICTR, *Prosecutor v. Muvunyi*, ICTR-00-55A-AR73, [Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005](#), 12 May 2005, para. 31.

<sup>73</sup> Veseli Response, para. 19.

referencing this article, the Veseli Defence fails to demonstrate how the Third Category of the Proposed Amendments is factually or legally distinct and can serve as additional basis of conviction. Similarly, the Pre-Trial Judge's order that the SPO must request leave to amend the Confirmed Indictment when pleading further instances of personal participation is inapposite.<sup>74</sup> At issue here, is not whether a request to amend the indictment should be made, but rather, once the request has been made, whether the proposed amendment constitutes a new charge pursuant to Rule 90(2) of the Rules.

28. The Pre-Trial Judge accordingly finds that the First Category and Second Category of amendments amount to new charges within the meaning of Rule 90(2) of the Rules and must therefore be assessed, against the requisite evidentiary threshold of "well-grounded suspicion", as per Rule 86(4) of the Rules, in light of the evidence submitted, as per Rule 86(3) of the Rules. The Pre-Trial Judge also finds that the Third Category does not amount to new charges within the meaning of Rule 90(2) of the Rules and therefore Rule 86(3) and (4) of the Rules does not apply.

#### B. PREJUDICE TO THE ACCUSED

29. The SPO submits that the Proposed Amendments are consistent with and do not prejudice the Accused's rights.<sup>75</sup> The SPO argues that the Request has been made at the proper stage, while the pre-trial phase is ongoing and litigation relating to preliminary motions is still pending.<sup>76</sup> The SPO further argues that requesting the Proposed Amendments together, at this stage, and after the Decision on the Form of the Indictment, streamlines the amendment process.<sup>77</sup> With respect to the First Category and Second Category, the SPO maintains that interviews of key

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<sup>74</sup> Decision on Form of the Indictment, paras 91-92.

<sup>75</sup> Request, paras 8, 13.

<sup>76</sup> Request, para. 9.

<sup>77</sup> Request, para. 9.

witnesses occurred after confirmation proceedings.<sup>78</sup> As concerns the Third Category, the SPO argues that this proposed amendment followed the Pre-Trial Judge's order that further instances of the Accused's personal participation would require leave to amend the Confirmed Indictment.<sup>79</sup> The SPO submits that the Proposed Amendments only concern additional factual allegations underpinning the existing charges and do not alter the nature of the charges and therefore would require relatively limited Defence investigation or preparation.<sup>80</sup> The SPO further submits that the supporting material underlying the Proposed Amendments has already been disclosed to the Defence pursuant to Rule 102(1) of the Rules to the extent allowed under the protective measures regime.<sup>81</sup>

30. The Selimi Defence, Thaçi Defence and Veseli Defence argue that the Proposed Amendments add new allegations and expand the case against the Accused rather than improve the clarity of existing allegations.<sup>82</sup> The Thaçi Defence, Krasniqi Defence and Veseli Defence argue that granting leave to amend with respect to new charges will delay the start of trial and require additional time for Defence investigations thereby violating the Accused's right to be tried within a reasonable time.<sup>83</sup> In addition, the Defence argues that the SPO failed to act diligently in bringing the Request in a timely manner thereby breaching the Accused's right to be tried within a reasonable time and being promptly informed of the cause of the charge against them.<sup>84</sup> In particular, the Defence argues that the SPO was in possession of the majority of the relevant information before completion of the confirmation process which undermines any claims of diligence.<sup>85</sup> It is further argued that the SPO fails to provide

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<sup>78</sup> Request, para. 10.

<sup>79</sup> Request, para. 10, referring to Decision on Form of the Indictment, paras 91-92.

<sup>80</sup> Request, para. 11.

<sup>81</sup> Request, para. 12.

<sup>82</sup> Selimi Response, para. 16; Thaçi Response, para. 17; Veseli Response, paras 3-4, 22-23.

<sup>83</sup> Thaçi Response, para. 17; Krasniqi Response, para. 15; Veseli Response, paras 28-30.

<sup>84</sup> Selimi Response, paras 17-18; Thaçi Response, paras 18-21; Krasniqi Response, para. 13; Veseli Response, paras 3, 24, 31.

<sup>85</sup> Selimi Response, paras 17-18; Thaçi Response, paras 18-21; Krasniqi Response, para. 13.

reasons for the timing of the interviews of the key witnesses or the subsequent delay in filing the Request.<sup>86</sup> The Veseli Defence asserts that failure by the SPO to provide notice to the Pre-Trial Judge and the Defence of its intention to request leave to introduce new charges should be considered an attempt to conduct a trial by ambush.<sup>87</sup> The Thaçi Defence asserts that any reliance on the Decision on the Form of the Indictment, in relation to the timing of the Request, “rings hollow” as “it is trite law that an indictment must specifically plead personal participation in detail”.<sup>88</sup> It is additionally argued that considerations relating to the rights of victims, while not disputed, do not trump the Accused’s fair trial rights and are undermined by the SPO’s lack of diligence.<sup>89</sup>

31. The SPO replies that, in light of the fact that the Proposed Amendments and supporting material are limited in scope, no trial date has been set and preliminary motion litigation is on-going, the Defence has failed to establish how it will not have sufficient time to prepare.<sup>90</sup> In terms of any concerns regarding the delay of the proceedings, the SPO replies that Rule 92 and 97 procedures can run concurrently with the remaining stages of the pre-trial phase.<sup>91</sup> The SPO argues that the issue of diligence must be assessed in the context of the case as a whole.<sup>92</sup> The SPO further argues that amendments to an indictment should not be barred where they serve the interests of justice and victims and would not cause undue delay or prejudice.<sup>93</sup>

32. Before all else, the Pre-Trial Judge notes that Rule 90 of the Rules clearly allows for the possibility of changes being made to the indictment. It is also noted that the provision does not establish a deadline within which changes to the indictment may be requested. This does not mean, however, that amendments to, new charges or the

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<sup>86</sup> Selimi Response, para. 18; Krasniqi Response, para. 13; Veseli Response, para. 31.

<sup>87</sup> Veseli Response, paras 25-27.

<sup>88</sup> Thaçi Response, para. 21. *See also*, Krasniqi Response, para. 14.

<sup>89</sup> Selimi Response, para. 19; Thaçi Response, para. 22; Veseli Response, para. 32.

<sup>90</sup> Reply, para. 2.

<sup>91</sup> Reply, para. 3.

<sup>92</sup> Reply, para. 4.

<sup>93</sup> Reply, para. 4.

substitution of more serious charges in the indictment can be requested at any time and under any circumstances. Pursuant to Rule 90(2) of the Rules, regardless of whether an amendment amounts to a new charge or not, consideration must be given to the potential prejudicial impact of a proposed amendment. Factors to be considered in this regard, include, but are not limited to: (i) whether the amended indictment improves the clarity and precision of the case to be met; (ii) the diligence of the prosecution in making the amendment in a timely manner that avoids creating an unfair tactical advantage; and (iii) any delay or prejudice to the defence from the amendment.<sup>94</sup>

33. The Pre-Trial Judge considers that the Proposed Amendments have been provided to: (i) more fully reflect the group of victims involved, by expanding that group to include women (First Category); (ii) more accurately describe the geographical and/or temporal scope of the alleged crimes (First Category and Second Category); and (iii) more precisely reflect the Accused's personal participation in the JCE (Third Category).<sup>95</sup> In this regard, the Pre-Trial Judge notes that the First Category and Second Category of amendments are not aimed at clarifying or making more precise existing charges. This does not constitute an impediment to amending the Confirmed Indictment, but in light of the more substantive nature and potential impact of these amendments, analysis of the diligence of the SPO in putting forth the Proposed Amendments and the potential prejudice to the Accused is all the more important.

34. With respect to the diligence of the SPO in seeking to amend the Confirmed Indictment, the Pre-Trial Judge notes that submission of the Proposed Amendments

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<sup>94</sup> See similarly e.g., ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, [Decision on Severance of Andre Rwamakuba and for Leave to File Amended Indictment](#), 14 February 2005, para. 35; *Prosecutor v. Bizimungu et al.*, ICTR-99-50-AR50, [Decision on Prosecutor's Interlocutory Appeal against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment](#), 12 February 2004, para. 16; *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73, [Decision on Prosecutor's Interlocutory Appeal Against Trial Chambers III Decision of 8 October 2003 Denying Leave to file an Amended Indictment](#), 19 December 2003, paras 13-31.

<sup>95</sup> Request, para. 7.



occurred nine months after the most recent witness statement.<sup>96</sup> The Pre-Trial Judge further notes the submissions of the Defence that a number of witness interviews underlying the Proposed Amendments occurred before the rendering of the Confirmation Decision.<sup>97</sup> It is noted, however, that the SPO has filed the Proposed Amendments while the pre-trial phase is ongoing and litigation relating to the preliminary motions is still pending. As indicated by the SPO, many processing steps must follow the witness interview before an amendment to the Confirmed Indictment is proposed, and the SPO sought to aggregate the amendment requests.<sup>98</sup> Were the proceedings more advanced, the Pre-Trial Judge would expect the SPO to be more expeditious in proposing amendments and not wait to aggregate its proposals. In the current circumstances, however, the Pre-Trial Judge does not find there to have been a lack of diligence on the part of the SPO.

35. Any benefit brought about by the Proposed Amendments must be weighed against any prejudice to the Accused's rights, in particular the right to be tried within a reasonable time. As indicated above, the First Category and Second Category of Amendments are "new charges" within the meaning of Rule 90(2) of the Rules and therefore entail review of the supporting material by the Pre-Trial Judge, a further appearance as well as potential additional litigation through the filing of preliminary motions.<sup>99</sup> These additional procedural steps do require additional time, but can be carried out in parallel with the remaining stages of the pre-trial phase and therefore will likely have a more limited impact on the time it takes to proceed to trial. This is particularly the case as preliminary motions remain pending at the appellate level and Rule 102(3) disclosure and Defence investigations are ongoing.

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<sup>96</sup> The SPO appears to have taken the witness statements between July 2019 and December 2020. Request, para. 10; Thaçi Response, paras 19-21; Selimi Response, para. 18; Krasniqi Response, para. 13; Veseli Response, para. 31; Reply, para. 4.

<sup>97</sup> Selimi Response, para. 18; Thaçi Response, paras 19-21; Krasniqi Response, para. 13; Veseli Response, para. 31.

<sup>98</sup> Reply, para. 4.

<sup>99</sup> Rules 86(3) and (4) and 90(2), (3), and (4) of the Rules.

36. As regards adequate time for defence preparations, the Pre-Trial Judge notes that investigations by the Defence do not need to be fully completed before trial.<sup>100</sup> In addition, in light of the stage of proceedings, and the limited additions to the charges, the potential introduction of new allegations would not deprive the Accused of adequate time to prepare their defence. Furthermore, should it be required, schedules may be adjusted to facilitate adequate defence preparations.

37. The Pre-Trial Judge accordingly finds that, in the present instance, the Proposed Amendments are not unfair or inconsistent with the rights of the Accused.

### C. ACCUSED'S RIGHT TO BE HEARD

38. The SPO submits that defence submissions pursuant to Rule 90(1)(b) of the Rules are limited to the impact of the Proposed Amendments on the Accused's rights at this stage of the proceedings and that the admissibility and weight of the evidence falls outside the scope of this review.<sup>101</sup> The SPO further submits that the Panel need not resolve any competing submissions about the supporting materials.<sup>102</sup>

39. The Selimi Defence responds that Rule 90(1)(b) of the Rules does not place any limitation as to the scope of Defence submissions on amendments proposed under this regime.<sup>103</sup> It argues that such a limitation would have been made express.<sup>104</sup> The Selimi Defence further argues that prejudice to the Accused is but a preliminary assessment in the regime for amending an indictment, the Pre-Trial Judge must also examine all other relevant factors to properly exercise his discretion as well as examine the supporting material to determine whether a well-grounded suspicion has been

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<sup>100</sup> KSC-BC-2020-06, F00438/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Eighth Decision on Specialist Prosecutor's Request for Protective Measures*, 24 August 2021, confidential, para. 65.

<sup>101</sup> Request, para. 5.

<sup>102</sup> Request, para. 5.

<sup>103</sup> Selimi Response, para. 10.

<sup>104</sup> Selimi Response, para. 10.

established.<sup>105</sup> The Selimi Defence therefore concludes that Defence submissions on such matters must be considered by the Pre-Trial Judge.<sup>106</sup> The Selimi Defence further submits that redactions permeate the Confirmed Indictment and prevent the Defence from undertaking proper and effective investigations, and the Proposed Amendments must therefore be assessed in full awareness of the impact of these redactions on Defence preparations and the future conduct of trial proceedings.<sup>107</sup>

40. The Krasniqi Defence responds that Rule 90(1)(b) of the Rules guarantees the Accused's right to be heard on any proposed amendments to the indictment including those amounting to new or more serious charges.<sup>108</sup> The Krasniqi Defence argues that requiring the Defence to make submissions in relation to heavily or fully redacted parts of the Proposed Amendments inevitably denies the Defence a fair opportunity to be heard and is out of line with international practice.<sup>109</sup> It is argued that the extent of redactions deprives the Accused of adequate notice of the charges and hampers the Defence's ability to conduct investigations.<sup>110</sup> The Krasniqi Defence submits that the Request should in principle be assessed only after all the redactions applied in Confirmed Indictment have been lifted so that it can make more meaningful submissions.<sup>111</sup> The Krasniqi Defence reserves its position regarding the Proposed Amendments until a lesser redacted or unredacted version of the proposed amended indictment is made available to the Defence.<sup>112</sup>

41. The Thaçi Defence responds that, with respect to the Third Category, the redaction of entire paragraphs is excessive. The Thaçi Defence invites the Pre-Trial Judge to review all proposed redactions and ensure that a lesser redacted version of

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<sup>105</sup> Selimi Response, paras 11-13.

<sup>106</sup> Selimi Response, para. 14.

<sup>107</sup> Selimi Response, paras 20-22.

<sup>108</sup> Krasniqi Response, para. 8.

<sup>109</sup> Krasniqi Response, para. 8.

<sup>110</sup> Krasniqi Response, para. 9.

<sup>111</sup> Krasniqi Response, paras 10-11.

<sup>112</sup> Krasniqi Response, para. 7.

the proposed amended indictment is disclosed without delay.<sup>113</sup> The Thaçi Defence reserves its position in relation to the redacted portions of the Third Category<sup>114</sup> and requests that the SPO be ordered to submit a lesser redacted version of the Confirmed Indictment and an amended consolidated outline with the new alleged incidents.<sup>115</sup>

42. The Veseli Defence responds that redactions in relation to the Third Category of amendments vitiate the Accused's right to be heard before the Pre-Trial Judge who considers whether leave to amend the indictment should be granted.<sup>116</sup> It is further argued that these redactions, at this point in the proceedings, violate the Accused's right to be informed promptly of the nature and cause of the charges against him, as guaranteed by Article 30(1) of the Constitution, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 21(4)(a) of the Law.<sup>117</sup>

43. The SPO replies that the redactions do not impact the Defence's ability to make meaningful submissions on the impact of the Proposed Amendments on the fairness of the proceedings, which is the fundamental matter under consideration pursuant to Rule 90 of the Rules.<sup>118</sup> The SPO further replies that redactions will be lifted on an ongoing basis and pursuant to the court-ordered protective measures regime.<sup>119</sup>

44. As concerns the Accused's right to be heard, pursuant to Article 39(8) of the Law and Rule 90(1)(b) of the Rules, the Pre-Trial Judge considers that the Law and the Rules do not place any limitation on the scope of Defence submissions in relation to the process for seeking leave to amend an indictment. The Pre-Trial Judge further notes that the proceedings have passed the *ex parte* confirmation stage and have entered a phase in which the Defence participates, *inter alia*, by making submissions

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<sup>113</sup> Thaçi Response, para. 14.

<sup>114</sup> Thaçi Response, para. 14.

<sup>115</sup> Thaçi Response, para. 25.

<sup>116</sup> Veseli Response, para. 5.

<sup>117</sup> Veseli Response, para. 6.

<sup>118</sup> Reply, para. 5.

<sup>119</sup> Reply, para. 5.

or applying for relief, except where otherwise provided by the Rules.<sup>120</sup> In addition, the Pre-Trial Judge notes that there is existing international practice that allows the Defence to challenge the proposed amendments to an indictment on issues other than the matter of prejudice.<sup>121</sup>

45. The Pre-Trial Judge accordingly finds that the Defence's right to be heard pursuant to Article 39(8) of the Law and Rule 90(1)(b) of the Rules is not limited to whether or not the Proposed Amendments are prejudicial.

46. As to the extent of the Accused's right to be heard, the Pre-Trial Judge recalls that, with a few exceptions, namely that the material is manifestly non-authentic or has been obtained in violation of the Law, the Rules or standards of international human rights law, issues related to the admissibility and weight of the evidence indeed fall outside the scope of his review.<sup>122</sup> Pursuant to Rule 86(4) of the Rules, the Pre-Trial Judge's prerogative is to determine whether a well-grounded suspicion exists. The Pre-Trial Judge accordingly conducts a preliminary assessment of the supporting material, without encroaching on the prerogatives of the Trial Panel.<sup>123</sup> The Parties submissions should therefore be circumscribed in this respect as well.

47. As concerns the Defence request for a lesser redacted version of the Confirmed Indictment and the supporting material to the Proposed Amendments, the Pre-Trial Judge notes that the redactions stem from previously granted protective measures.<sup>124</sup>

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<sup>120</sup> Rule 75 of the Rules.

<sup>121</sup> See e.g., STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, [Redacted Version of the Decision Relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, Dated 31 July 2013](#), 2 August 2013, paras 9-11, 16; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-PT, [Decision on Motion to Amend the Indictment](#), 11 May 2006, para. 20; ICTR, *Prosecutor v. Ngirabatware*, ICTR-99-54-T, [Decision on Prosecution Motion for Leave to Amend the Indictment](#), 29 January 2009, paras 11-14, 24-40; SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, [Decision on Prosecution Application for Leave to Amend the Indictment](#), 31 July 2006, paras 30, 38. Acknowledging that the confirmation process is conducted *inter partes* under the Rome Statute, see also, ICC, *Prosecutor v. Kenyatta*, ICC-01/09-02/11-700-Corr, Pre-Trial Chamber II, [Corrigendum to "Decision on the 'Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61\(9\) of the Statute'"](#), 21 March 2013, para. 22.

<sup>122</sup> Confirmation Decision, para. 50.

<sup>123</sup> Confirmation Decision, paras 49-50.

<sup>124</sup> Request, para. 12, footnote 25.

The need to protect the identities of victims and witnesses must therefore be weighed against the rights of the Accused. The Pre-Trial Judge has scrutinised the redactions applied by the SPO and finds them to be necessary and proportionate to protect the identities of the witnesses and the confidentiality of the information related to said witnesses. The Pre-Trial Judge is of the view that the Defence is in an overall position to provide meaningful challenges to the Proposed Amendments on the basis of the confidential redacted version of the Confirmed Indictment and the supporting material. These redactions shall therefore not be lifted until such time as ordered in the relevant protective measures decision(s). In this regard, the Pre-Trial Judge notes that, on 17 December 2021, the SPO provided its pre-trial brief and related material, including a list of witnesses. The case is therefore entering into a phase in which the delayed disclosure deadline for a number of witnesses will have passed. The SPO may therefore be in a position to provide a further lesser redacted version of the Confirmed Indictment, Rule 86(3)(b) Outlines and the Request. The Pre-Trial Judge accordingly orders the SPO to scrutinise the Confirmed Indictment, Rule 86(3)(b) Outlines and the Request and prepare, if possible, lesser redacted versions by 17 January 2022.

48. After submission of a lesser redacted Confirmed Indictment and Request, the Defence will be given until 31 January 2022 to provide submissions, if they so wish, in response to the SPO's Request on whether a well-grounded suspicion in relation to the First Category and Second Category of the Proposed Amendments has been established pursuant to Rule 86(4) of the Rules. The SPO may reply, if it so wishes, by 4 February 2022.

#### D. FILING OF AN AMENDED INDICTMENT IN RELATION TO JCE III

49. The SPO notes that it does not address the Pre-Trial Judge's order for the SPO to file an amended indictment excluding JCE III liability for special intent crimes within the Request.<sup>125</sup>

50. The Veseli Defence notes that, while the Pre-Trial Judge did not order the SPO to file an amended indictment excluding JCE III liability for special intent crimes within a specific timeframe, the time of the execution of this order has not been left to the discretion of the SPO.<sup>126</sup> The Veseli Defence asserts that, in failing to comply with this order of the Pre-Trial Judge, the SPO is attempting to *de facto* give suspensive effect to its interlocutory appeal in violation of Rule 171 of the Rules.<sup>127</sup> It follows that the SPO's request to include certain incidents of "persecution" and "torture" while charging the Accused with the same modes of liability should be summarily dismissed.<sup>128</sup>

51. The Pre-Trial Judge recalls that he ordered the SPO to file an amended indictment excluding JCE III liability for special intent crimes.<sup>129</sup> The Pre-Trial Judge also notes that the SPO has appealed the relevant finding in relation to the application of JCE III to special intent crimes.<sup>130</sup> In light of the Court of Appeals recent determination on this matter, the Pre-Trial Judge finds the relevant Veseli Defence submissions to be moot.<sup>131</sup>

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<sup>125</sup> Request, footnote 2.

<sup>126</sup> Veseli Response, para. 33.

<sup>127</sup> Veseli Response, para. 34.

<sup>128</sup> Veseli Response, para. 35.

<sup>129</sup> KSC-BC-2020-06, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021, public, para. 214(d).

<sup>130</sup> KSC-BC-2020-06/IA009/F00014, Specialist Prosecutor, *Prosecution Appeal against the 'Decision on Motions Challenging the Jurisdiction of the Specialist Chambers' pursuant to Rule 97(3)*, 27 August 2021, public, with Annex 1, public.

<sup>131</sup> KSC-BC-2020-06, IA009/F00030, Court of Appeals, *Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers"*, 23 December 2021, public, para. 236.

## V. VARIATION OF TIME LIMITS

52. The Pre-Trial Judge notes that, pursuant to Rule 123(3) of the Rules, during court recess, unless otherwise determined by a Panel, time limits shall not be suspended. In light of winter judicial recess, the Pre-Trial Judge considers it appropriate to vary, pursuant to Rule 9(5)(a) of the Rules, the time limit to request certification to appeal under Rule 77 of the Rules, should either Party wish to do so. Accordingly, the time limit to file any such request(s) shall run as of 10 January 2022, and any application filed before that date will not trigger any time limit for responses or a decision by the Pre-Trial Judge.



## VI. DISPOSITION

53. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **GRANTS** the SPO leave to amend the Confirmed Indictment and Rule 86(3)(b) Outlines in relation to the Third Category of Proposed Amendments;
- b) **ORDERS** the time limit for any request(s) for certification to appeal this decision to run as of 10 January 2022, as indicated in paragraph 52, above;
- c) **ORDERS** the SPO to provide, if possible, a lesser redacted Confirmed Indictment, Rule 86(3)(b) Outlines and Request by 17 January 2022, as indicated in paragraph 47, above;
- d) **REQUESTS** the Defence, if they so wish, to file submissions, in response to the Request, on the supporting material in relation to the First Category and Second Category of amendments, by 31 January 2022, as indicated in paragraph 48, above; and
- e) **REQUESTS** the SPO to file a reply, if any, to the Defence submissions by 4 February 2022.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 23 December 2021

At The Hague, the Netherlands